

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
)  
Closed Captioning and Video )  
Description of Video Programming )  
)  
Implementation of Section 305 of the )  
Telecommunications Act of 1996 )  
)  
Video Program Accessibility )  
\_\_\_\_\_ )

MM Docket No. 95-176

REPLY COMMENTS

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NORTHEASTERN UNIVERSITY  
THE BOARD OF TRUSTEES OF THE LELAND  
STANFORD JUNIOR UNIVERSITY

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## SUMMARY

Illinois Institute of Technology, Northeastern University, and The Board of Trustees of the Leland Stanford Junior University (the "ITFS Educators") urge the Commission not to impose captioning requirements on instructional video programming. As licensees of ITFS stations that transmit formal educational programming to enrolled students, the ITFS Educators are concerned that such requirements may hinder their efforts to achieve accessibility for Deaf and hearing-impaired students.

A number of technical problems must be overcome in order to make ITFS programming accessible, and so, several methods may be needed to ensure accessibility for ITFS programming. A mandatory captioning requirement for ITFS programming could disrupt accessibility programs already in place at educational institutions and divert resources designed to develop these multiple methods of making instructional material accessible. Accordingly, an exemption for ITFS programming from any captioning requirements should be adopted.

Such an exemption would not thwart the goals of Section 713 of the Telecommunications Act of 1996. Most ITFS licensees are already required to provide accessibility pursuant to the Americans with Disabilities Act and/or Section 504 of the Rehabilitation Act of 1973. The availability of alternative means of achieving accessibility is a factor in granting exemptions from the captioning requirements. In any event, the Commission's definition of "video programming provider" appears not to include ITFS licensees among the parties responsible for

captioning. This is the correct result, and the Commission should make that clear in its final rules.

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**REPLY COMMENTS**

Pursuant to Section 1.415 of the Commission's Rules, Illinois Institute of Technology ("IIT"), Northeastern University ("Northeastern"), and The Board of Trustees of the Leland Stanford Junior University ("Stanford") (collectively, the "ITFS Educators") hereby submit their response to the initial comments filed regarding the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.<sup>1</sup>

I. INTRODUCTION

In this proceeding, the Commission proposes to implement the requirements of Section 713 of the Telecommunications Act of 1996,<sup>2</sup> and to adopt regulations to

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<sup>1</sup> Closed Captioning and Video Description of Video Programming, FCC 97-4 (released Jan. 17, 1997).

<sup>2</sup> Pub. L. 104-104, § 305, 110 Stat. 56, 126-28 (1996) (codified at 47 U.S.C. § 613).

ensure that "video programming first published or exhibited after the effective date of such regulations is fully accessible through the provision of closed captions."<sup>3</sup> A number of parties filed initial comments on February 28, 1997, which recommended approaches to imposing responsibility for captioning which would result in the proposed regulations applying directly to ITFS licensees and/or ITFS programming.<sup>4</sup> In particular, some commenters argued that there should be no blanket exemption from the captioning regulations for instructional programming.<sup>5</sup> Other parties suggested that the responsibility for captioning should be placed on program producers, which may include ITFS licensees.<sup>6</sup>

The ITFS Educators fully support Congress's goal in adopting Section 713 of the Telecommunications Act of 1996 "to ensure that all Americans ultimately have

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<sup>3</sup> 47 U.S.C. § 613(b)(1).

<sup>4</sup> Captioning requirements may also be imposed on ITFS licensees indirectly. The Commission anticipates that "our rules will result in video programming providers incorporating [captioning] requirements into their contracts with video producers and owners, regardless of which party has the obligation to comply with our rules." (NPRM, ¶ 30). Thus, it is possible that a video programming provider may seek to shift the burden of captioning to an ITFS licensee as a condition of carrying its instructional programming on a cable system.

<sup>5</sup> See, e.g., Comments of The League for the Hard of Hearing, at 7; Comments of Association of Late-Deafened Adults, at 5; Comments of Northern Virginia Resource Center for Deaf and Hard of Hearing Persons, at 5; Comments of The Coalition of Protection and Advocacy Systems, at 6. These commenters urge the Commission to refrain from granting a blanket exemption for instructional programming. Some refer generally to instructional programming while others specifically mention courses broadcast by colleges and universities.

<sup>6</sup> See, e.g., Comments of The Wireless Cable Association International, Inc., at 3-11.

access to video services and programs."<sup>7</sup> However, these parties share the view of those who have recommended that ITFS licensees and/or programming should be exempt from mandatory captioning requirements.<sup>8</sup> Most ITFS licensees transmit ITFS programming through closed systems to known students and are already obligated to make such programming accessible to Deaf and hearing-impaired students. Thus, mandatory captioning of ITFS programming would not necessarily result in increased accessibility. In fact, imposing a single solution (closed captioning) to achieve accessibility may limit the flexibility which educators require to meet the needs of Deaf and hearing-impaired students.

As educational institutions which utilize ITFS extensively for students in undergraduate and graduate degree programs, the ITFS Educators are familiar with the requirements of Deaf and hearing-impaired students and believe that the regulations adopted in this proceeding should not limit their ability to make ITFS programming accessible. Thus, these recommendations are based not on the desire simply to avoid the costs of captioning, but rather on the desire to preserve the necessary discretion to find the best solution(s) to achieve accessibility in the educational context.

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<sup>7</sup> H.R. Rep. 104-458, 104th Cong., 2d Sess., at 183 (1996).

<sup>8</sup> See Comments of Indiana Higher Education Telecommunication System, at 10-13; Comments of Catholic Television Network, at 6-10; Comments of The Wireless Cable Association International, Inc., at 13; Comments of BellSouth Corporation, at 15-16; Joint Comments of Higher Education Parties, at 4-5; Joint Comments of ITFS Parties, at 5-8; Comments of the Archdiocese of Los Angeles Education and Welfare Corporation, at 2-6; Comments of the Roman Catholic Diocese of Rockville Centre, at 3.

The ITFS Educators are accredited educational institutions which offer formal, for-credit instruction leading to the award of diplomas and/or degrees to enrolled students, and each is authorized by the Commission to transmit ITFS programming to specific receive sites. In accordance with the Commission's Rules, each of these licensees uses its ITFS facilities to transmit "formal educational programming offered for credit to enrolled students."<sup>9</sup>

A. IIT. IIT is the licensee of ITFS Station WBM-648 (E Channel group) and Station WHG-269 (G Channel group) in Chicago, Illinois. IIT uses its ITFS system to transmit graduate and undergraduate courses, on a live interactive basis, in diverse subject areas, including, for example, biology, chemical engineering, computer science, economics, electrical and computer engineering, environmental engineering, manufacturing technologies, mechanical and aerospace engineering, mechanics, and metallurgical and materials engineering. IIT transmits on the average of 100 courses each Fall and Spring semester. On-campus seminars and general interest lectures are also transmitted.

IIT's ITFS programming is provided to enrolled students at Chicago area corporations and colleges and universities, such as Oakton Community College, Harper College, IIT's Rice Campus and the Chicago Medical School. Colleges and universities that receive IIT's programming are also used as "public" receiving sites. Any person in the Chicago area admitted to the university may participate in courses, if supported in the distance education schedule via ITFS, at these

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<sup>9</sup> 47 C.F.R. § 74.931(a)(1).



locations. In addition to its transmission of instructional programming, IIT is leasing excess capacity airtime to People's Choice TV, which is operating a wireless cable system in the metropolitan Chicago area.

B. Northeastern. Northeastern is the licensee of ITFS Station KYP-23 (Channels B1-4) in Boston, Massachusetts. Northeastern transmits credit and noncredit courses in arts and sciences, business administration and wellness education, engineering and engineering technology as well as complete graduate degree programs in electrical and computer engineering on a live, interactive basis to approximately 2,000 students located at Northeastern's suburban Boston campuses. In addition, at least 3,000 persons employed at corporate receiving locations involved in diverse high technology industries enroll in Northeastern to receive both credit and continuing education ITFS programming. Network Northeastern operates year-round on a 12-15 hour weekday schedule and on Saturdays.

C. Stanford. Stanford has been licensed to operate an ITFS system on Channels E1-4 (KGG-38) in the San Francisco Bay Area for over 25 years, and recently added a fifth channel on Station WNTA-285 (H3). Stanford's instructional television network transmits over 250 courses per year in various subject areas, including, for example, engineering, computer science, math, applied physics and statistics, to approximately 3,500 students enrolled in the University. In addition, approximately 3,500 students receive courses on a non-credit basis. These courses are transmitted on a one-way video, two-way audio interactive

basis. The Stanford Instructional Television Network operates 12 hours a day, Monday through Friday, and is also in operation on weekends.

Stanford's instructional programming is transmitted to numerous receiving and response sites located at various buildings on Stanford's campus, research centers with which the university is affiliated, and the facilities of major corporations and research institutions in the San Francisco Bay Area, including for example, Sun Microsystems, Inc., Silicon Graphics, Inc., Oracle Corporation, Hewlett-Packard Company, Apple Computer, Inc., Chevron Oil Company, IBM, the NASA-Ames Research Center, and the Lawrence Livermore Laboratory. Employees of these institutions and corporations enroll in Stanford's courses as fully matriculated graduate students, non-registered graduate students or auditors.

Based on their combined experience in delivery of ITFS programming, the ITFS Educators recommend that the Commission provide an exemption for ITFS licensees and/or programming from the captioning requirements as set forth more fully below.

II. A CAPTIONING REQUIREMENT FOR ITFS PROGRAMMING  
MAY RESTRICT RATHER THAN INCREASE ACCESSIBILITY  
FOR DEAF AND HEARING-IMPAIRED STUDENTS.

In order to grant an exemption from the captioning requirement, the Commission must weigh the economic burden of captioning against the benefits to Deaf and hearing-impaired viewers. For this analysis with respect to ITFS

programming, the Commission must take into account not only the cost of captioning but also the nature of ITFS programming and the context in which it is transmitted. Making instructional programs accessible presents unique technological problems, and imposition of a mandatory captioning requirement may foreclose the multiple accommodations already being made by ITFS licensees.

A.     The Nature of ITFS Programming Requires  
          Utilization of Multiple Methods to Achieve Accessibility.

ITFS programming presents a number of technical problems for educators to overcome in order to achieve accessibility for Deaf and hearing-impaired students, and does not always lend itself to captioning as the best method of achieving accessibility. These issues may not have been recognized by the commenters recommending captioning of instructional programming. Although the ITFS Educators recognize the importance of making instructional programming accessible, a mandatory captioning requirement for ITFS programming could hinder educators' efforts to achieve accessibility.

First, effective classroom instruction usually requires the use of visual aids, including computer screens, which fill the screen during transmission while the lecturer continues to talk. It is not clear how an ITFS programmer would caption its programs without damaging the clarity of such visual displays.<sup>10</sup> If a student cannot see the graphic on the screen or decipher the instructor's notes on the

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<sup>10</sup> See NPRM, ¶ 73 (proposing to exempt "video programming that is primarily textual").

board because they are obscured by captions, then the captions would be doing more harm than good. Moreover, certain materials may not allow readjustment of the screen size to leave a place for captions without shrinking the information transmitted to indecipherability.

Second, live instructional broadcasts are frequently based on textual and graphical information that changes significantly from frame-to-frame as, for example, equations, computer models, or simulations are developed or fleshed out. Captioning of this programming would impose on the student the task of concentrating on two fields of text: the captions of the lecturer and the textual or graphical materials.

Third, as the Commission (NPRM, ¶¶ 18-22) and commenters<sup>11</sup> recognize, captioning is an expensive procedure, and the Commission has pointed out (NPRM ¶ 76) that a local programmer, such as an ITFS station, "typically operates on a relatively small production budget." To the basic costs of captioning, ITFS programmers would be required to add costs for real-time captioning because many instructional programs are transmitted on a live or unscripted basis from a studio classroom, at times with spontaneous audio feedback from remote sites.

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<sup>11</sup> See Comments of Indiana Higher Education Telecommunication System, at 10; Comments of Catholic Television Network, at 6-7; Comments of The Wireless Cable Association International, Inc., at 8; Joint Comments of ITFS Parties, at 5-6; Comments of the Archdiocese of Los Angeles Education and Welfare Corporation, at 3-4; Comments of the Roman Catholic Diocese of Rockville Centre, at 3.

The need to caption these complex interactions would raise the cost of captioning by requiring stenocaptioners with very particular skills.

The economic burdens of captioning instructional programming would be increased because accurate captioning of classroom lectures requires a stenocaptioner with an expertise in particular fields of study. If the person responsible for captioning the lecture, whether live or taped, is not well versed in the subject being taught, then there is a risk that the captions will not accurately reflect the material. A stenocaptioner with such special expertise will be more difficult to locate and more expensive to employ, and additional lead time may be required for the captioner to learn the material.

As these problems illustrate, the benefits of captioning entertainment programming do not necessarily translate to instructional programming. Educators must have several methods available to provide accessibility for ITFS programming to Deaf and hearing-impaired students so that they can tailor a solution to fit various educational and individual circumstances. A mandatory captioning requirement for such programming could disrupt accessibility programs already in place at educational institutions. Moreover, if ITFS licensees were required to allocate funds for production of captioned programming, such an allocation could divert resources from activities designed to develop these multiple methods of making instructional material accessible. Accordingly, the Commission should exempt ITFS programming from any captioning requirements adopted in this proceeding.

B. ITFS Entities Are Generally Required to Ensure the Accessibility of Instructional Programming.

As several commenters noted, most ITFS licensees are already subject to the Americans with Disabilities Act ("ADA")<sup>12</sup> and/or Section 504 of the Rehabilitation Act of 1973.<sup>13</sup> The ADA and Section 504 require institutions subject to these Acts to provide reasonable accommodation for Deaf and hearing-impaired students to access instructional material, which includes ITFS programming.<sup>14</sup> To impose a captioning requirement on ITFS entities would create a new economic burden in order to accomplish what is already being supplied to students under the ADA and/or Section 504.<sup>15</sup>

The legislative history of the Telecommunications Act of 1996 points out that among the factors to be considered by the Commission in determining appropriate exemptions is "the existence of alternative means of providing access

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<sup>12</sup> 42 U.S.C. §§ 12101 *et seq.* The ADA generally prohibits action which would cause a person with a disability to be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity.

<sup>13</sup> 29 U.S.C. § 794. Section 504 generally ensures that individuals with disabilities are not excluded from participation in or denied the benefits of a program or entity receiving federal financial assistance.

<sup>14</sup> See 47 C.F.R. § 74.932(a) ("With certain limited exceptions . . . a license for an instructional television fixed station will be issued only to an accredited institution or to a governmental organization engaged in the formal education of enrolled students or to a nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations").

<sup>15</sup> See Comments of Indiana Higher Education Telecommunication System, at 7-8; Joint Comments of Higher Education Parties, at 4; Joint Comments of ITFS Parties, at 7-8.

to the hearing impaired."<sup>16</sup> The ITFS Educators already devote considerable resources to meeting the requirements of Section 504 and/or the ADA and ensuring that ITFS programming, like all instructional material, is accessible to all students. Section 713 of the Act addresses the same concerns but, as discussed above, provides less flexibility to educators in meeting the needs of Deaf and hearing-impaired students. Congress appears to have recognized that captioning need not be mandated in contexts where the goals of Section 713 are already being achieved. The educational use of ITFS programming is one such context, and so, the legislative history of the Act supports the exemption recommended by the ITFS Educators and other commenters.

### III. ITFS LICENSEES AND PROGRAMMING SHOULD BE EXEMPT FROM CAPTIONING REQUIREMENTS.

The ITFS Educators agree with those commenters who point out that the Commission's definition of "video programming provider" does not include ITFS licensees among the parties that would be responsible for the captioning requirements.<sup>17</sup> The Commission proposes to require captioning by "all entities who provide video programming directly to a customer's home." (NPRM, ¶ 28.)

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<sup>16</sup> H.R. Rep. 104-204, 104th Cong., 2d Sess., at 115 (1995).

<sup>17</sup> See Comments of Indiana Higher Education Telecommunication System, at 5-6; Comments of Catholic Television Network, at 4-5; Comments of The Wireless Cable Association International, Inc., at 11-12; Comments of BellSouth Corporation, at 15-16; Joint Comments of Higher Education Parties, at 3-4; Joint Comments of ITFS Parties, at 3; Comments of the Roman Catholic Diocese of Rockville Centre, at 2.

This does not include ITFS licensees because ITFS does not have as its principal focus delivery of video programming directly to the public or consumers' homes. ITFS programming is distributed through a closed-circuit or encoded system to receive sites established by the licensee, and is primarily intended to be viewed only by students who have paid any relevant tuition and registered for the specific course in which the programming is used as instructional material. Thus, the licensee can easily determine whether there is a need to accommodate Deaf or hearing-impaired students at the receive site and how best to accommodate those needs.

Accordingly, when it promulgates regulations for the captioning requirements, the Commission should make clear the exclusion of ITFS licensees from the definition of "video programming provider." Moreover, for the reasons set forth above, in order to ensure that ITFS programming can be transmitted by any technology or video delivery system without captioning, the Commission should adopt a specific exemption for all transmissions of ITFS programming in accordance with Section 713 of the Act.<sup>18</sup>

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<sup>18</sup> 47 U.S.C. § 613(d)(1); see, e.g., Comments of Indiana Higher Education Telecommunication System, at 10-13.



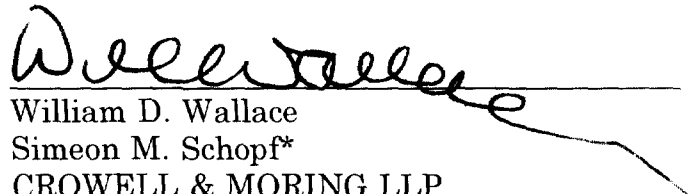
IV. CONCLUSION

For the reasons set forth above, IIT, Northeastern and Stanford recommend that the Commission reject the recommended rules which would impose captioning on ITFS programming and adopt rules governing the captioning of video programming consistent with the views expressed herein.

Respectfully submitted,

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